

February 16, 2022

VIA e-mail to

Carlton Waterhouse
Deputy Assistant Administrator
Office of Land and Emergency Management
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20004
Waterhouse.Carlton@epa.gov

RE: Additional Information Regarding Communities Potentially Affected by the U.S. Environmental Protection Agency's Oversight of Cleanup Decisions at the Oak Ridge Reservation and the Radionuclide Pollution Decision

Dear Deputy Assistant Administrator Waterhouse:

The Southern Environmental Law Center, Advocates for the Oak Ridge Reservation, Tennessee Chapter of the Sierra Club, and Tennessee Citizens for Wilderness Planning (Community Groups) write to express our appreciation for the invitation to speak with representatives of the U.S. Environmental Protection Agency (EPA) and other state and federal regulatory stakeholders regarding the U.S. Department of Energy's (DOE) ongoing and proposed remedial actions at the Oak Ridge Reservation in Oak Ridge, Tennessee. Community Groups also write to follow up and provide fish consumption studies and other information regarding communities potentially affected by the existing and proposed radioactive and hazardous waste landfills that are the subject of the Radionuclide Pollution Decision.¹

Community Groups commend the Biden Administration's commitment to centering environmental justice in all of its decision-making activities as well as responding to the grave risks posed by the climate crisis. From his first day in office, and as articulated in Executive Order 13990, President Biden has been clear about the Administration's commitment to listen to science, ensure public access to clean water, limit the public's exposure to dangerous chemicals, and hold polluters accountable.² These principles are all interconnected and implicated in the cleanup activities at the Oak Ridge Reservation.

Community Groups acknowledge and appreciate the steps EPA has taken to engage Oak Ridge community members on a range of environmental issues which are important to them,

¹ Letter from Administrator Andrew R. Wheeler, EPA, to John A. Mullis II, DOE, and David W. Salyers, TDEC, re: Final Decision re: Discharge of Wastewaters During Response Action Under CERCLA at the Oak Ridge Reservation Facility (Dec. 31, 2020) (hereinafter "Radionuclide Pollution Decision").

² Executive Order 13990 of January 20, 2021, *Protecting Public health and the Environment and Restoring Science to Tackle the Climate Crisis*, 86 Fed. Reg. 7037–7043 (Jan. 20, 2021),

including by hosting last week's listening sessions. However, we are concerned that, to date, the communities most likely to be harmed by the Radionuclide Pollution Decision and the proposed Environmental Management Disposal Facility have not been adequately identified, nor the risks to them appropriately evaluated or disclosed. As previously acknowledged by EPA, the communities most likely to be affected by water pollution at DOE's current and proposed landfills are the anglers who fish and eat aquatic organisms downstream of the receiving waterway, Bear Creek, which feeds into East Fork Poplar Creek, Poplar Creek, and the Watts Bar Reservoir.³

It is apparent that the waterways around the Oak Ridge Reservation are heavily fished by the local community. Recent creel surveys undertaken by the Tennessee Wildlife Resources Agency (TWRA) show that in 2020, almost 32,000 angler trips were made to Watts Bar Reservoir, with over sixty-one percent of interviewed anglers travelling less than 25 miles from their home to their fishing location.⁴ Community Groups are not aware of current statistics detailing the fishing practices of anglers within Bear Creek; however, as we previously noted in our letter to EPA dated August 2, 2021, Bear Creek is easily accessible from at least three locations from a beloved and well-used public greenway, and DOE reports indicate that the hydrology of the waterway is changing to support more fish species, likely due to beaver activity.⁵ Easy public access combined with a waterway growing more conducive to fishing undergird Community Groups' concerns that the active local angler community will increasingly frequent Bear Creek and its downstream waterways in the coming decades.

Local angling practices are a concern in the context of the cleanup activities at the Oak Ridge Reservation because fish consumption studies indicate that a substantial portion of the angler community within the area eat their catch from these contaminated waterways. For instance, a 2002 study of fishing practices around the Oak Ridge Reservation found that, although ninety percent of anglers fishing in Poplar Creek had heard of fish consumption warnings, forty percent of those anglers thought that the fish were safe to eat, and thirty percent in fact ate fish caught from within the study area.⁶ In a related study based on the same data, it was determined that anglers fishing Poplar Creek ate an average of 37 grams of fish per day and almost 14 kilograms (approximately 494 ounces) of fish from the study area per year.⁷

³ Radionuclide Pollution Decision, 3.

⁴ Att. 1, Wm. Patrick Black, *Report No. 21-06 Tennessee Statewide Creel Survey 2020 Results*, TENN. WILDLIFE RES. AGENCY (June 2021).

⁵ Letter from Amanda Garcia, SELC, et al. to Michael Regan, EPA, re: Concerns Regarding the U.S. Department of Energy's Recent actions During the U.S. Environmental Protection Agency's Review of the December 31, 2020 Radionuclide Pollution Decision for the Oak Ridge Reservation Facility in Oak Ridge, Tennessee (Aug. 2, 2021).

⁶ Att. 2, Kym Rouse Campbell et al., *Fishing along the Clinch River arm of Watts Bar Reservoir adjacent to the Oak Ridge Reservation, Tennessee: behavior, knowledge and risk perception*, 299 SCI. OF THE TOTAL ENV'T, 145–161 (Nov. 2002).

⁷ Att. 3, Joanna Burger et al., *Fishing and consumption patterns of anglers adjacent to the Oak Ridge Reservation, Tennessee: higher income anglers ate more fish and are more at risk*, 11 J. OF RISK RSCH., 335–350 (May 17, 2008).

Community Groups are not aware of current demographic data regarding anglers fishing near the Oak Ridge Reservation, but as we have repeatedly stated, we remain concerned that low-wealth and/or Latino communities may constitute a growing portion of the local fishing population. In a June 23, 2021 meeting, Community Groups first alerted EPA of having received anecdotal information that low-wealth and/or Latino communities may be practicing subsistence fishing in waterways around and downstream from the Oak Ridge Reservation, and we recommended that the agency prepare updated demographic and fish consumption studies in order to accurately assess communities that would be affected by ongoing remedial actions at the site. Community Groups again reiterated this concern in our August 2, 2021 and November 4, 2021 letters to EPA. This information, if true, would update demographic data from the previously mentioned fishing studies which only recorded anglers as being white, Black, or “ethnic Chinese.”⁸

General demographic trends from East Tennessee support our concern that the local fishing demographics may be changing; for instance, recent census data indicates that nearby Knox County saw a ninety percent increase in its Hispanic/Latino population over the past decade, with 1.2 new Hispanic/Latino residents added to the county for every new non-Hispanic white resident added.⁹ As East Tennessee’s demographics evolve, it is important that EPA seek updated information regarding how these changes could affect environmental justice concerns in the community, including at the Oak Ridge Reservation.

At the time of Community Groups’ request in June 2021, EPA indicated that only fish *tissue* studies were being conducted in Bear Creek. Community Groups are not aware of any additional demographic and fish consumption research having been conducted in the interim. We would welcome any update EPA may have regarding steps the agency has taken in the seven months since our June 2021 meeting to identify local angling communities and understand current fish consumption habits.

Regardless of any updated, site-specific angler demographic and fish consumption data, the most effective way to achieve the interconnected goals articulated in Executive Order 13990—including centering environmental justice, listening to science, ensuring public access to clean water, limiting the public’s exposure to dangerous chemicals, and holding polluters accountable—remains to apply the science-based principles set forth in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Clean Water Act (CWA). Perhaps most importantly, this includes the principle that pollution should be minimized using the best available treatment technology before it leaves the site. *See* 42 U.S.C. § 9621(b)(1). EPA has the opportunity to uphold these principles by revising the flawed Radionuclide Pollution Decision.

Applying CERCLA’s common-sense statutory preference for treatment-based standards to remedial activities at the Oak Ridge Reservation does not need to result in additional delay of this much-needed cleanup effort. Indeed, Community Groups understand that the current delay in

⁸ *See e.g.*, Campbell et al., *supra* note 6.

⁹ Jesse Fox Mayshark, *For Latinos, a Demographic Leap*, COMPASS (Aug. 19, 2021), <https://compassknox.com/2021/08/19/for-latinos-a-demographic-leap/>.

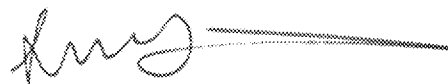
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this remedial action has been caused in large part due to the regulatory parties' continued inability to agree on the appropriate wastewater discharge standards under the Radionuclide Pollution Decision. By revising the Radionuclide Pollution Decision to properly reflect CERCLA's remedial preferences, EPA can clarify that DOE's remedial action must comply with applicable or relevant and appropriate requirements (ARARs) which are based on technology-based effluent limits and Tennessee's antidegradation statement. This clarification would resolve outstanding disagreements between the agencies while protecting all anglers who fish downstream.

For decades, the Oak Ridge community has borne disproportionate levels of pollution generated by DOE's operational activities in East Tennessee. It is imperative that this legacy pollution is both addressed promptly and also that the selected remedy actually cleans up the pollution, rather than merely shifting it from the Oak Ridge Reservation into downstream creeks and rivers where it can be ingested by aquatic organisms and ultimately harm Tennessee's robust fishing communities. Community Groups urge EPA to revise the Radionuclide Pollution Decision to ensure that a prompt *and* protective remedial action is selected and implemented at the Oak Ridge Reservation.

Sincerely,



Amanda Garcia
Stephanie Biggs
Attorneys
Southern Environmental Law Center
agarcia@secltn.org
sbiggs@secltn.org

Jimmy Groton
President
Advocates for the Oak Ridge Reservation

Sandra Goss
Executive Director
Tennessee Citizens for Wilderness Planning

Axel Ringe
Water Quality Chair
Tennessee Chapter Sierra Club

Virginia Dale
Advocates for Oak Ridge
Reservation

Cc: Barry Breen, EPA Acting Assistant Administrator for the Office of Land and Emergency Management, Breen.Barry@epa.gov
David Hockey, EPA Acting Associate Director for the Federal Facilities Restoration and Reuse Office, Hockey.David@epa.gov
Dimple Chaudhary, EPA Deputy General Counsel for Nationwide Resource Protection Programs, Chaudhary.Dimple@epa.gov
Frederick J. Thompson, Acting Deputy Regional Administrator, Region 4, Thompson.Fred@epa.gov
Greg Young, TDEC Deputy Commissioner, Greg.Young@tn.gov
Jeffrey Prieto, EPA General Counsel, Prieto.Jeffrey@epa.gov
John Nicholson, EPA Region 4 Chief of Staff, Nicholson.John@epa.gov
Laura Wilkerson, Manager, Oak Ridge Office of Environmental Management, Laura.Wilkerson@orem.doe.gov
Leif Palmer, Regional Counsel, EPA Region 4, palmer.leif@epa.gov
Matthew Lee-Ashley, Acting Chief of Staff, White House Council on Environmental Quality, Matthew.G.Lee-Ashley@ceq.eop.gov
Michael Regan, EPA Administrator, Regan.Michael@epa.gov
Nicole Nelson-Jean, DOE Associate Principal Deputy Assistant Secretary for Field Operations at the Office of Environmental Management Nicole.Nelson-Jean@em.doe.gov
Patrick Flood, TDEC Senior Advisor to the Bureau of Environment, Pat.Flood@tn.gov
Radhika Fox, EPA Assistant Administrator for the Office of Water, Fox.Radhika@epa.gov
Silvina Fonseca, EPA Senior Policy and Technical Advisor to the Assistant Administrator for the Office of Land and Emergency Management, Fonseca.Silvina@epa.gov